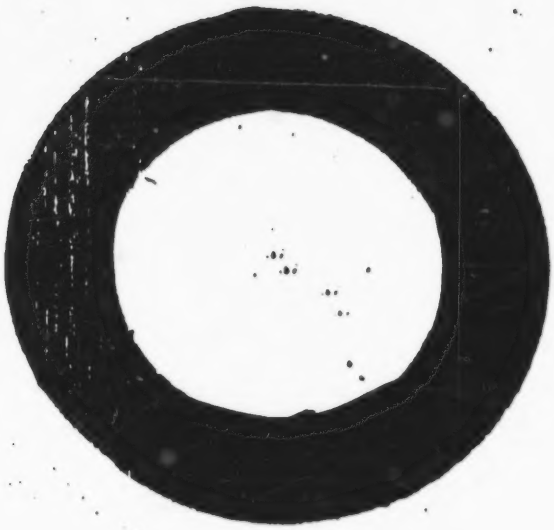

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1989

Addendum

ECUADOR*

[26 September 1991]

I. GENERAL INFORMATION

Introduction

1. On this occasion, the Government of Ecuador would like to emphasize the basic features of its position on human rights:

(a) Respect for the powers of the different branches of government and the individual rights of persons subject to Ecuadorian jurisdiction and legislation;

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* The present document contains information supplementing the additional report requested by the Committee against Torture at its fifth session at the end of the consideration of the initial report of Ecuador (CAT/C/7/Add.7) on 14 November 1990 (CAT/C/SR.61).

GE.91-13819/3871B

(b) A commitment and willingness to guarantee the effective enjoyment of civil and political rights, and an effort to create conditions in which everyone living in Ecuador can enjoy economic, social and cultural rights; and

(c) Active and consistent efforts to establish and maintain a situation conducive to the exercise of these rights and the removal of obstacles to their enjoyment.

2. The Government's attitude is a product of history: despite internal disturbances characteristic of a State gradually claiming its independence and exercising its sovereignty, Ecuador has never at any time disregarded the basic rights of the human being. It has been a firm supporter of the abolition of the death penalty and the prohibition and punishment of slavery as a criminal offence, in particular; they have been proclaimed in the country's Constitution since the earliest days of its independence. The 1830 Constitution established the equality of all Ecuadorians before the law, and the 1845 Constitution stipulated that "nobody in the Republic is born a slave or may be brought into the Republic as such without being freed". Similarly, the 1851 Constitution abolished the death penalty for "purely political" offences, and this provision was extended in the 1878 Constitution to eliminate the death penalty for any type of offence.

3. Ecuadorian legislation has always kept abreast of developments in human rights and enshrined human rights in constitutions and laws, taking into account the fact that the individual, as the basic unit of society, deserves the protection of the State.

4. The introduction of modern law, with its new concerns, into the economic, social and cultural sphere, was reflected in the 1929 Constitution, article 158 of which stipulated:

> "The guarantees and rights enumerated in the Constitution neither limit nor exclude others inherent in the human personality or deriving from the principle of sovereignty and the republican form of government."

5. This principle, which demonstrates the desire not to restrict any rights, has from that time on been a part of Ecuador's constitutional tradition. In addition to individual guarantees, the 1929 Constitution set forth for the first time, guarantees relating to the family, education and culture, economics, work and social security.

6. Ecuador's current Constitution, in article 44, simply ratifies its traditionally firm stance in favour of respect for the human rights and fundamental freedoms of every individual by laying down the following general rule:

> "The State guarantees to all individuals, male or female, who are subject to its jurisdiction, free and effective exercise and enjoyment of the civil, political, economic, social and cultural rights enunciated in declarations, pacts, agreements and other international instruments in force."

7. This means that, in addition to the fundamental freedoms and guarantees granted by the Constitution and laws of the Republic, everyone living in the country, whether Ecuadorian or foreign, enjoys the rights stipulated in over 20 international human rights instruments to which Ecuador is a party.

General legal framework

8. Article 1, paragraphs 1 and 2, of the Political Constitution of the Republic of Ecuador states:

> "Ecuador is a sovereign, independent, democratic and unitary State. Its Government is republican, presidential, elective, representative, responsible and alternating ... Sovereignty resides in the people, who exercise it through the organs of the public power."

9. Following this definition of the political structure of the State, article 2 states:

> "The primary function of the State is to strengthen national unity, ensure the effectiveness of the fundamental human rights and to promote the economic, social and cultural progress of its inhabitants."

10. It is an indication of the importance attached by Ecuadorian society to upholding and promoting human rights that Title I of the Constitution, the fundamental law of the State, encapsulates these principles which the country and its Government have pledged themselves to protect both domestically and internationally. To demonstrate this commitment and to prepare the ground for the defence of human rights, Ecuador has recognized the competence of bodies to consider any complaints filed against the Government with the Committee on the Elimination of Racial Discrimination, the Human Rights Committee or the Committee against Torture itself, not to mention those dealing with similar matters at the regional level.

11. More specifically, article 19, paragraph 1, of the Political Constitution, section I of which lists individual rights, duties and guarantees, stipulates:

> "Art. 19. Without prejudice to other rights necessary for the full moral and material development of the individual, the State guarantees:
>
> 1. Inviolability of life and personal integrity. There is no death penalty. Torture and all inhuman or degrading treatment are forbidden."

12. A few elements of this provision deserve examination. First, the guarantees provided apply to all persons, whether Ecuadorians or foreigners, an aspect that will be analysed later on and that complements article 14 of the Constitution on the legal status of foreigners, which stipulates: "Foreigners generally enjoy the same rights as Ecuadorians, with the limitations established in the Constitution and in the law." These limitations basically concern the rights to elect and be elected, for which the country's legislation requires a person to be an Ecuadorian, the holding

of public office, certain restrictions on the right to own real estate in national security areas, and provisions governing entry into and exit from the country according to the type of visa held.

13. The second aspect is the fact that the list in article 19 is not exhaustive. The expression "Without prejudice to other rights ..." allows the possibility of other guarantees which, while not set forth in the Constitution or laws of the Republic, are enunciated in declarations, pacts, agreements and other international instruments in force. This rule is contained in article 44, as mentioned above.

14. In addition to the general listing contained in the Constitution, various articles of criminal legislation prohibit torture and lay down the penalties to which culprits are liable. Article 187 of the Penal Code stipulates:

> "When an arrested or detained person is subjected to physical torture, the culprit shall be punished by three to six years' imprisonment (reclusión menor). The penalty shall be six to nine years' imprisonment (reclusión menor) if the torture results in any of the permanent injuries referred to in the section on injuries. If the torture results in death, the culprit shall be punished by 12 to 16 years' imprisonment (reclusión mayor extraordinario)."

15. The foregoing article appears in title II of the Penal Code, which deals with offences against constitutional freedoms, and in this sense is in direct concordance with the constitutional provision.

16. In order to understand the penalty grading system, it should be explained that the maximum penalty provided for under Ecuadorian criminal legislation is 16 years' imprisonment (reclusión mayor extraordinario), and penalties are not cumulative. This is because the philosophy behind the entire Ecuadorian penal system is the reintegration of the offender into society and prisons exist chiefly for this purpose, although, given general economic conditions in Ecuador, much naturally remains to be done to bring practice into line with philosophy.

17. Chapters VI and VII of the Penal Code constitute a specific section dealing with crimes relating to statements by accused persons or their relatives and crimes against prisoners or detainees. The relevant articles are the following:

> "Article 203. Any judge or official who compels a person to testify against himself or a spouse, his ascendants, descendants or relatives within the fourth degree of consanguinity or the second degree of affinity, in matters that may involve criminal liability, shall be punished with six months' to three years' imprisonment.
>
> Article 204. Any judge or official who extracts statements or confessions against the persons indicated in the foregoing article, through whipping, imprisonment or threat of torture, shall be punished with two to five years' imprisonment and deprived of his citizen's rights for a period equal to the duration of the sentence.

Article 205. Anyone who gives or carries out the order to torture a prisoner or detainee, with solitarity confinement for a period longer than specified by the law, or with shackles, stocks, bars, handcuffs, ropes, unhealthy prison cells or any other form of torture shall be punished with one to five years' imprisonment and deprived of his political rights for the same period.

Article 206. Neither insecure cells, nor the fearsome character or rebellious conduct of the detainee or prisoner may be used as an excuse in the cases mentioned in the foregoing article.

Article 213. Any other arbitrary act undermining the rights and freedoms guaranteed by the Constitution, ordered or executed by a public servant or official, or by a representative or agent of authority or the police, shall be punishable by three to six months' imprisonment."

18. Similarly, article 273 of the Penal Code stipulates the following, under offences committed by public officials:

"If a public official of any kind, Government employee or police officer, executor of legal orders or judgements or police official violates or causes to be violated without legitimate grounds the rights of any person in or in connection with the exercise of his functions, the minimum penalty stipulated for such acts shall be increased in keeping with article 275."

19. Article 275 states that beyond cases in which the law specifies penalties for offences committed by public officials or employees, public officials or employees found guilty of other offences which they were responsible for preventing, prosecuting or punishing shall be liable to the penalties set forth for such offences, with the minimum penalty doubled in the case of detention (prisión) and increased by two years if the penalty is imprisonment (reclusión major or menor).

20. It should be pointed out that the Code does not just refer to physical torture, despite the fact that when it was drafted, moral or psychological torture was not a well-known issue. It leaves open the possibility of other types of torture into which the latter fits.

21. It should also be noted that the Code does not distinguish between the person giving an order and the person carrying it out: the rule applies in both cases. We will return to this aspect later on.

22. In adjective law, the Code of Penal Procedure affords guarantees of respect for the human rights of the accused during the investigatory phase and the transparency of the proceedings.

23. The Code establishes the Judicial Police as an auxiliary body of the Department of Justice, comprising specialized staff of the National Police (Code of Penal Procedure, art. 53).

24. The Code also describes the functions of the Judicial Police, including that of taking down, accurately and in writing, the accused's freely and spontaneously given account of the circumstances of and motives for the act and his own and others' part in it (art. 54, para. 5).

25. This provision is supplemented by article 128 of the Code, which states:

> "The accused shall not be compelled by physical or moral coercion to declare himself guilty of the offence. Similarly, the use of violence, drugs and techniques or methods of any kind which prevent an individual from giving evidence freely and voluntarily is prohibited, either during the trial or during the investigation before or during the trial. Any officials, employees or police officers who breach this rule shall be liable to criminal punishment."

26. In short, although Ecuadorian legislation contains no explicit definition of what is meant by torture, torture is prohibited under the Constitution and the categorization of the various offences of torture affords ample scope for the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Since the Convention has been incorporated into the country's legislation and forms an integral part of it, through a mechanism which will be described below, it has become part of Ecuador's internal positive law and may be invoked by judges and courts and in the administrative sphere.

International conventions signed and ratified by the Republic of Ecuador

27. The idea of extending the rights and guarantees of individuals is so deeply rooted in the consciousness of the Ecuadorian people that, as indicated above, article 44 of the Constitution lays down the principle that all the civil, political, economic, social and cultural rights set forth in declarations, covenants, conventions and other international instruments in force are valid.

28. Ecuador has signed, ratified or acceded to nearly all the human rights instruments established in the United Naions and in the more specific field of inter-American relations. In the United Nations context, it ratified the International Covenant on Civil and Political Rights on 24 January 1969. It ratified the Additional Protocol to the Covenant on 2 November 1968, and on 6 March 1969 deposited its instrument of ratification in which it recognizes the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation of any of the rights set forth in the Covenant. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified on 9 March 1988 and the instrument of ratification deposited on 30 April 1988. Ecuador has made the declarations provided for in articles 21 and 22 of the Convention, recognizing the competence of the Committee to consider communications relating to lack of compliance with the provisions of the Convention by Ecuador.

29. In the field of international humanitarian law, Ecuador ratified the Geneva Conventions of 12 August 1949 (Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Convention for

the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Convention relative to the Treatment of Prisoners of War, Convention relative to the Protection of Civilian Persons in Time of War) on 27 March 1954; the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction on 2 August 1954; Additional Protocols I and II to the 1949 Geneva Conventions (the instrument of ratification was deposited on 10 April 1979); and the International Convention against the Taking of Hostages on 18 April 1988.

30. In the context of the Organization of American States, Ecuador has signed the Inter-American Convention to Prevent and Punish Torture, although this has not yet been ratified or entered into force, and a variety of agreements on asylum, political asylum, and extradition, among others.*

Incorporation of international conventions into domestic legislation

31. Article 78 (f) of the Constitution states:

> "Article 78. The President of the Republic has the following powers and duties:
>
> [...]
>
> (f) To decide foreign policy and direct international relations, enter into treaties and other international agreements in accordance with the Constitution and the law, to ratify such agreements subject to approval by the National Congress, to exchange or deposit, as appropriate, the relevant letters of ratification."

32. Once an agreement has been signed, the National Congress has to approve or reject it. Article 59 (h) of the Constitution states:

> "Article 59. The National Congress shall meet in Quito on 10 August each year in plenary session, without the need for it to be convened, and shall sit for a non-extendable period of 60 days, to deal exclusively with the following matters:
>
> [...]
>
> (h) To approve or reject government treaties and other international conventions."

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* A list of international United Nations and Organization of American States human rights instruments applicable in Ecuador may be consulted in Spanish in the files of the United Nations Centre for Human Rights.

33. After approval by Congress, it is the responsibility of the President to ratify the agreement and have it published in the Registro Oficial, as required by article 5, paragraphs 1 and 2, of the Civil Code:

> "The law shall only become binding by virtue of its promulgation by the President of the Republic and after sufficient time to become informed thereof has passed.
>
> The promulgation of laws and decrees shall be made in the Registro Oficial, and their date of promulgation for legal purposes, shall be the date of the Registro."

34. Once agreements and international conventions have been published in the Registro Oficial, they assume full force and can be invoked in the same way as a law by individuals and applied by judges, courts and administrative bodies with the jurisdiction to do so.

Competence and jurisdiction

35. With regard to the remedies available to the individual in connection with alleged torture, jurisdictional means must be distinguished from those laid down by the Constitution itself.

36. In the former case, torture is punishable and can be investigated at the initiative of the authorities. It is not only the perpetrators who may be punished; liability also extends to accomplices and accessories. Police superintendents and commissioners and judges of the criminal and higher courts and the Supreme Court of Justice have jurisdiction to investigate individual reports and accusations of torture.

37. Criminal proceedings in the case of torture are initiated officially: this may be by the judge who learns of the crime, or at the urging of the government prosecutor, or in response to a report, an individual accusation, a police report or inquiry or instructions from a higher administrative body (arts. 15 et seq. of the Code of Penal Procedure).

38. Special mention should be made of article 36 of the Code of Penal Procedure, which states:

> "Article 36. Anyone may lodge an individual accusation in respect of offences infringing constitutionally protected rights that are committed by public officials or representatives of authority, provided that surety against rash accusation (caución de temeridad) is posted in an amount which the Court deems appropriate in view of the seriousness of the accusation and the economic circumstances of the accused. When lodging accusations of the offences referred to in the preceding paragraph, the persons named in article 34, paragraphs 1 and 2, shall not be required to post security against rash accusation. Surety shall be posted by public instrument."

39. Hence this article allows violations of any constitutional guarantee by a public official to be reported. The surety against rash accusation is intended to deter unfounded reports, and need not be posted by the victim or his legal representative, relatives of the victim within the fourth degree of consanguinity and the second degree of affinity or any spouse or heir laying an accusation of causing the death of the victim. Exemption is also allowed to any juridical person laying an accusation through a representative (art. 34 of the Code of Penal Procedure).

40. The Constitution of Ecuador also establishes an independent body to oversee the application of and faithful compliance with the guarantees laid down in the Constitution.

41. Article 140 of the Constitution states: "a Court of Constitutional Guarantees with national jurisdiction shall be established in Quito ...".

42. Article 141 lays down the powers of the Court:

> "The Court of Constitutional Guarantees shall be responsible for:
>
> 1. Overseeing compliance with the Constitution, which it shall urge upon the authorities and other employees of the public administration;
>
> 2. Drawing attention to decrees, agreements, regulations, ordinances and resolutions uttered at variance with the Constitution and laws, after hearing the authority or body which has uttered them;
>
> 3. Considering complaints from any natural or legal person regarding violation of the Constitution in contravention of the rights and freedoms guaranteed by it and, if such complaints are found to be justified, drawing the matter to the attention of the relevant authority or body, as in the preceding paragraph;
>
> Disregard for the Court's directions shall be specifically punishable, and application may be made for the dismissal by their superiors of those responsible without prejudice to any criminal proceedings which may be instituted ...
>
> 4. Suspending at any time, totally or partially, on its own initiative or upon request, the effects of any laws, decrees, agreements, regulations, ordinances or resolutions that may be unconstitutional in form or substance. The Court shall submit its decision for approval by the National Congress or, when the Congress is in recess, to the Standing Parliamentary Committees in plenary session. Neither the decision of the Court nor that of the National Congress or the Parliamentary Committees in plenary session shall apply retroactively ..."

43. It should also be mentioned that the National Congress has set up an Ad Hoc Human Rights Committee comprising legislators of all political hues, with the following main objectives:

(a) To consider and verify reports of human rights violations submitted by individuals and institutions to the Committee or other human rights bodies in Ecuador and the corresponding international bodies;

(b) To establish responsibility for human rights violations; to institute administrative and criminal proceedings against officials who are accessory to, order or engage in activities contrary to human rights;

(c) To promote programmes publicizing and disseminating information on human rights;

(d) To consider the prison situation in Ecuador and initiate action to improve it by seeking to rehabilitate prisoners;

(e) To put forward constitutional and legal reforms with a view to strengthening citizens' basic rights;

(f) To monitor international reports of human rights violations in Ecuador and oversee efforts to shed light on the facts; and

(g) To monitor observance of human rights throughout the world, particularly in Latin America, promoting the protection of human rights in interparliamentary gatherings and, where appropriate, encouraging the National Congress to pronounce on the most serious cases.

44. Besides all these bodies available to individuals, anybody living in Ecuador enjoys the rights recognized under the agreements, covenants and conventions to which Ecuador is a party and can thus, if he has a claim to make, apply without distinction to the courts or domestic jurisdictional bodies, municipalities, the National Congress and the Court of Constitutional Guarantees, and the competent international organizations: the Human Rights Committee, the Inter-American Commission on Human Rights and the Court established under the Pact of San José, the Committee on the Elimination of Racial Discrimination and the Committee against Torture, since Ecuador has recognized the competence of those bodies to receive and consider reports of human rights violations submitted by individuals. In this sense Ecuadorians enjoy very extensive guarantees of their basic rights.

45. Thus anyone who claims to have been the victim of torture or other cruel, inhuman or degrading treatment or punishment is entitled to complain to the various domestic and international bodies. Within Ecuador's domestic jurisdiction, proceedings will begin without delay so the matter can be investigated and those responsible punished.

46. Consistent with these provisions and as a guarantee of State responsibility for the acts of its officials, the Constitution in article 20 establishes the right to compensation, stating:

> "The State and other entities of the public sector shall be required to compensate individuals for any damage they may suffer as a result of the operation of public services or acts performed by public officials and employees in the exercise of their functions. The above-mentioned entities, in such cases, shall have the right to bring a third-party

action and enforce the responsibility of those officials or employees, who, through malice or gross negligence, as established by the courts, have caused the damage. The criminal responsibility of such officials and employees shall be established by the competent judges."

47. Article 21 of the Constitution states that when a conviction is revised or overturned on review, the person penalized by the conviction shall be rehabilitated and compensated by the State in accordance with the law.

48. This constitutional provision is taken up in article 392 of the Code of Penal Procedure, which states:

"When the Supreme Court of Justice, accepting an application for review, overturns or revises a sentence, the party unjustly convicted shall be entitled to compensation equivalent to double his income, as determined from his income tax declaration for the year immediately preceding his imprisonment, in proportion to the period he has been kept prisoner. If no income tax declaration exists, the compensation shall be equal to double the minimum living wage of the average worker for the entire time that the condemned person spent in detention."

49. Finally, persons convicted under an enforceable sentence must make joint and several payment for loss and damages caused to the victim (art. 329 of the Code of Penal Procedure).

50. The Ecuadorian Government is aware that a number of reports were submitted to the Special Rapporteur of the Commission on Human Rights in 1989 and 1990 alleging incidents of torture in the country. There follows below a summary of some of the replies which the Government has furnished at the request of the Special Rapporteur. More detailed information has been submitted directly to the Centre for Human Rights and the Special Rapporteur.

Silfrido Ilves Camacho. The judge of the National Police Second District Court in Riobamba, issued a writ declaring open the plenary hearings and identifying as the culprit National Police Officer Traquilino Floripes Gómez Vargas, and as his accomplices, Captain First Class Norberto Rafael Gavilanes, Police Officer José Humberto Carvajal Peña, Police Officer Angel Arturo Jimenez Mantilla and Angel Elías Argüello Pazmiño.

The aforesaid accused having lodged an appeal against this writ, the case is before the National Police First District Court in Quito, and has been since 27 March 1990.

Segundo Manuel Chimbay Zhinin. The judge of the National Police Third District Court in Cuenca, issued a writ on 25 July 1990 declaring open plenary hearings against Juan Hermida Bravo and

Luis Enrique Auqui, who submitted a written appeal on 27 July 1991; permission to appeal was granted the same day. The case is currently before the National Police Second District Court in Guayaquil.

Gonzalo Quinteri Mina. The General Inspectorate of the National Police, by letter 90-082-IGPN of 13 February 1990, forwarded to the National Commissioner in Lago Agrio the report on the inquiries conducted by UIES in Quito, and this led to the issuance of the writ for commencement of proceedings on 13 July 1990. Statements have been taken from National Police officers Angel Washington Romero Vargas and Edgar Bismar Aguilar Alvarez, who say that they had no part in the death of Gonzalo Quintero Mina. Nevertheless the case is continuing pending clarification of the matter.

Guido Israel Hoyos Toscano. Used to belong to Logistical Support Brigade No. 25, deserted from the El Corazón detachment, was detained in the San Bartolo sector and placed under the orders of the Criminal Court of the First Military Zone. During his detention, at the request of his relatives, he was visited by a Red Cross doctor who found no evidence of mistreatment.

Marco Antonio Espín López. Used to belong to Signals College Battalion No.81, "Rumiñahui", and was given a dishonourable discharge from the armed forces on 4 April 1990, having been implicated in drug-taking. There is no report of mistreatment or unjustified detention.

Roberto Manota Manota. Did his compulsory military service at the Military College and was discharged on 4 September 1990 in perfect health. It should be added that, following enquiries, legal proceedings have been initiated against the person implicated in the mistreatment of the former conscript.

Héctor Mejía and others. On 19 June 1989, on orders from the Third National Commissioner in Pichincha, Héctor Mejía, Segundo Cajilema, Segundo Criollo, Nicolás Paguay, Carlos Chicaiza and Segundo Guamacallo were detained on charges of stealing dollars which their owner had thrown in the dustbin. The detainees all work for the municipal sanitation department. The investigation was assigned to Officer 020 of the Criminal Investigation Service in Pichincha. The Commissioner immediately ordered the detainees set free. In actual fact, no investigation was carried out. Appropriate legal action has been taken on the report of torture.

Carlos Alberto Juela Molina. Detained for robbery, supposedly attacked by the crowd, and placed under the orders of the Juvenile Court; the appropriate enquiries were carried out and detective Marco Acosta was found to be responsible. He is being tried in the National Police First District Criminal Court.

Mariana Ayora and Martha Pérez. Detained for stealing a watch and a weapon belonging to the State from a National Police officer who was in a state of inebriation. They were detained and, apparently, tortured. Neither of these two citizens reported the matter, but an enquiry into the case was requested and the report was submitted to the Second Commissioner of the Canton of Quito, and is now in the hands of the competent court.

Gerardo Tascan. The alleged torture has not been reported to the competent authorities, but an enquiry has been carried out and the case is being dealt with in the Fourth Criminal Court in Pichincha.

51. In any case, as this extensive account shows, the Government of Ecuador has, through the competent bodies, initiated investigations into all the reports submitted and the cases will follow their course until a final decision has been reached on each.

Current situation and difficulties

52. From the foregoing it can be seen that the Government is determined to protect the human rights of all people living in the country; this is part of Ecuador's legal tradition, and deeply rooted in the collective conscience of society.

This circumstance has enabled Ecuador to maintain a degree of peaceful and harmonious social life that contrasts with the serious disturbances in other countries in the region. The same can be said of instances of torture: although - as in any country - abuses may occur, they are not a matter of Government policy but rather of junior officials overstepping their authority, whom the legal system immediately seeks to punish.

The Government also feels that, in order to eradicate torture altogether, human-rights training for the forces of law and order and the national police must be expanded; accordingly, seminars, conferences and other training projects have been organized. These will be described in more detail in Part II of this report.

Further, as mentioned above, the Government is at the moment setting up the Judicial Police, a specialized unit of the National Police which will be hierarchically subordinate to the court system and will have the vital function of conducting police inquiries - bringing to them, naturally, the necessary practical and human skills.

As in any developing country, however, there are shortcomings which must be overcome little by little so that the theory and practice of human rights can continue to grow in the national collective conscience and be reflected in peoples' attitudes towards their peers.

This doubtless complex process, which will require enormous resources, must also take account of the difficult circumstances in which Ecuador finds itself since as long as poverty exists there will be no fertile ground for the full development of human rights.

It is worth mentioning that, in the face of two clear threats of political and social destabilization - drug trafficking and the subversive movements which are particularly virulent in neighbouring countries - investigation procedures may, in order to keep the peace, have been carried to extremes. It is also possible that proper control was not exercised over acts which were sanctioned but are now being thoroughly investigated in order to prevent any recurrence.

II. INFORMATION CONCERNING ARTICLES IN PART I OF THE CONVENTION

Article 2

The introductory part of this report gives an exhaustive account of the legislative, administrative and judicial measures enacted in Ecuador to prevent torture and to punish any officials who may have committed it.

Specific measures recently adopted include the one already which established the Judicial Police. The Government, concerned at the inadequacy of the police investigation system, abolished the Criminal Investigation Service of the National Police by Executive Decree No. 2693 of 2 September 1991, and set up a commission at the highest level with instructions to submit, within 45 days, regulations and other relevant legal instruments to govern the functions of the Judicial Police which, as a technical and specialized body, will be at the service of judges, the courts and the Public Prosecutor's Office. It will have staff of the highest scientific and technical standards and will be provided with appropriate laboratories in all the provincial capitals.

The Commission consists of the President of the Supreme Court of Justice, the Attorney-General, the Minister of the Interior, the Under-Secretary for Justice at the Ministry of the Interior and the Commander-General of the National Police.

Pending the entry into operation of this specialized service, the Commander-General of the Police is responsible for organizing criminal investigations and taking steps to guarantee the personal security of detainees. The Ministry of the Interior, through the Under-Secretary for Justice, will take steps to safeguard the universal principles of human rights in all investigations conducted by the National Police.

Arrangements have been made to allocate extraordinary resources for this purpose.

The outline of the First Two-Year Plan of the Supreme Court of Justice suggests two legal reforms to protect the rights of individuals against the abuses that occasionally occur during an investigation. They would replace the National Commissioners by Justices of the Peace or judges operating under the supervision of the Supreme Court.

The proclamation of a state of emergency in Ecuador is governed by article 78 (n) and (ñ) of the current Constitution, which states expressly:

> "Article 78. The President of the Republic has the following powers and duties:
>
> [.....]
>
> (n) To declare a state of national emergency and assume the following powers or some of them in case of imminent external aggression, international war or a serious internal disturbance or catastrophe, notifiying the National Congress if in session or the Court of Constitutional Guarantees:

1. To direct the advance collection of taxes and other charges;

2. In case of international conflict, imminent invasion or internal catastrophe, to invest for the State's defence or in order to meet the catastrophe, Government funds earmarked for other purposes, except those intended for public health or social welfare;

3. To transfer the seat of Government to any place in national territory;

4. To close or authorize ports temporarily;

5. To impose prior censorship on social communication media;

6. To suspend constitutional quarantees; in no case however may the President decree the suspension of the right of inviolability of life and personal integrity, or the expatriation of an Ecuadorian citizen, nor place anyone under house arrest outside a provincial capital or in an area other than the one where the person concerned resides; and

7. To declare the national territory a security zone, in accordance with the law.

The National Congress or, if the Congress is in recess, the Court of Constitutional Guarantees may revoke the declaration of emergency if the circumstances so warrant;

(ñ) To rescind the declaration of the state of emergency when the reasons for it no longer exist, and so notify the National Congress or the Court of Constitutional Guarantees, as the case may be, without prejudice to the report he must render to the appropriate body".

Thus it can be seen that in none of the exceptional circumstances referred to above may the President or any other authority suspend the right to inviolability of life or personal integrity, and this of course rules out torture or any other inhuman or degrading treatment or punishment.

Furthermore, as a check on the powers of the different branches of Government, if the National Congress - or the Court of Constitutional Guarantees when the Congress is in recess - considers that the President has overstepped his authority in decreeing a state of emergency or in extending it unduly, it can revoke the declaration immediately or urge the President to do so.

In the chapter of the Penal Code on offences against prisoners or detainees, article 205, as mentioned above, stipulates penalties for "Persons who have issued or executed an order to torture prisoners or detainees ...". Article 213 similarly stipulates penalties for any public official or employee "who orders or carries out" any other act in breach of constitutional guarantees.

Concordant with these provisions, article 250 of the Penal Code, in the chapter on dereliction of duty by public officials, exempts from punishment any official who fails to obey an order from a superior when that order is "manifestly contrary to the Constitution". The last paragraph of the article specifies in addition that: "If the superior, having learnt of the objection, repeats the order, the subordinate shall comply and execute it immediately, except in the sole case of its being manifestly contrary to the Constitution and the law".

The Supreme Court of Justice has issued an opinion in favour of amending article 214 of the Penal Code to do away with the exemption from criminal liability of a subordinate who commits an illegal act on the orders of a superior. This reform will have to be decided on by the National Congress.

Lastly, attention should be drawn to article 42 of the Penal Code which specifies who is to bear responsibility for any offence and, in the same spirit as the above-mentioned provisions, states:

> "Article 42. The following shall be regarded as principals: those who perpetrate an offence either directly and immediately or by advising or instigating another to do so when the advice results in the perpetration of the offence; those who obstruct or attempt to obstruct its prevention; those who plan and cause an offence to be perpetrated through the agency of other persons, whether criminally liable or not, by means of payments, gifts, promises, orders or any other dishonest and direct means; those who assist in the perpetration as principals, deliberately and intentionally carrying out any act without which the offence could not have been perpetrated; and those who, by means of physical violence, abuse of authority, threats or any other means of coercion, compel another to commit the punishable act, even if the force used for that purpose cannot be described as irresistible."

Article 3

At the outset, attention must be drawn to article 42 of the Constitution, which specifies that in no circumstances may the extradition of an Ecuadorian citizen be granted: citizens must be tried under the laws of Ecuador.

Accordingly, extradition applies only to aliens and is governed by the Aliens Act and the Regulations pertaining thereto. Article 4 of the Regulations lists the cases in which extradition will not be granted, which include those where political offences are involved and where the person whose extradition is requested would have to appear in the requesting State before a judge or court of special jurisdiction. In addition, article 8 of the Aliens Act makes the handing over the requested person conditional upon the requesting State undertaking, among other things, that a sentence of imprisonment will not be converted into the death penalty and that political considerations will not be allowed to aggravate the penalty imposed.

The procedure established by the Act comprises a number of formal and substantive requirements that must be met: the requesting State must furnish satisfactory evidence that the request for extradition is based on a

conviction or an order of preventive custody issuing from a competent judge or court, indicating precisely the place, date, nature and circumstances of the offence, the identity of the accused and a copy of the criminal law on the offence and the applicable penalty and time limitation.

There are also procedural guarantees to protect the person whose extradition is requested. The President of the Supreme Court of Justice - the court before which these proceedings are conducted - has to notify the requested person to appear in order to defend himself, and if necessary must appoint a lawyer to defend him. Finally, whether the act alleged by the requesting State is indeed a punishable offence is a matter for the President of the Supreme Court of Justice alone to decide in conformity with the laws and international treaties in force.

It must be pointed out that Ecuador has been a party to the Convention relating to the Status of Refugees since it acceded to it in 1955. The Convention contains provisions on the subject which have the force of law in Ecuador.

All these guarantees are directed at protecting the right of every person to be tried only for offences defined by law and to benefit from a fair, proper and impartial trial with adequate legal safeguards for his defence.

Article 4

The introductory part of this additional report mentions the various provisions outlawing the practice of torture and the penalties applicable to public officials who perpetrate it.

Ecuadorian criminal law punishes the principals and accomplices in, and accessories to, crimes and attempted crimes. Article 42 of the Penal Code deals with principals. Articles 43 et seq. deal with accomplices and accessories. They provide as follows:

> "Article 43. The following shall be regarded as accomplices: those who cooperate indirectly and secondarily in the performance of the punishable act by means of previous or simultaneous actions ..."
>
> "Article 44. The following shall be regarded as accessories: those who, being aware of the criminal conduct of the wrongdoers, habitually furnish them with accommodation, a hiding place or meeting place or provide them with the means to benefit from the proceeds of their crime; or who help them by concealing the instruments used in or physical evidence of the offence or efface the signs or traces left by the offence in order to prevent its punishment, and those who, being bound by their profession, employment, craft or office to examine the signs or traces left by the offence or to investigate the punishable act, conceal or alter the truth to benefit the offender."

Penalties vary with the degree of responsibility for the commission of the offence. An attempted crime carries one third or two thirds of the penalty that would apply for a consummated offence. Accomplices are liable to half the penalty applicable to principals, and accessories to one quarter (arts. 46 et seq. of the Penal Code).

Article 5

The principle of the territoriality of the law is enshrined in article 13 of the Civil Code, article 5 of the Penal Code and article 3 of the Code of Penal Procedure.

The general principle is that every offence committed in the territory of Ecuador, whether by citizens or aliens, is to be tried and punished under Ecuadorian law unless otherwise provided by the law itself. The exceptions relate essentially to Heads of other States visiting the country, diplomatic representatives accredited to the Government of Ecuador and diplomatic representatives in transit.

The law treats as offences committed in the territory of Ecuador those committed on board Ecuadorian warships, merchant ships or military of civilian aircraft on the high seas or in international airspace, in territorial waters or the airspace above, or on the premises of Ecuadorian diplomatic missions abroad, and those in which the effects of the act or omission constituting the offence are liable to manifest themselves in Ecuador or places subject to its jurisdiction.

Moreover, Ecuadorian jurisdiction will apply to Ecuadorians and aliens who outside the territory of Ecuador commit any of the offences cited in article 5, paragraph 4 of the Penal Code, i.e. offences against the State; counterfeiting State stamps or making use of forged stamps; counterfeiting currency or banknotes that are legal tender, stamp-bearing securities or Government bonds; offences committed by public officials in the service of the State abusing their authority or neglecting the duties inherent in their station; breaches of international law; and any other offence for which special legal provisions or international conventions dictate that Ecuadorian law shall prevail.

To this should be added article 3 of the Code of Penal Procedure which, besides the situations already mentioned, specifies that Ecuadorian nationals and aliens who commit offences on board foreign ships or aircraft other than warships and military aircraft in Ecuadorian waters or airspace shall be subject to Ecuadorian law; the same is true of those engaging in piracy, traffic in persons, the slave trade or white slave trade, the destruction or damaging of submarine cables and other offences against international law, provided they have not already been tried in another State.

Concordant with these rules, article 4 of the Aliens Act specifies with regard to active extradition that when the investigation into a case appears to implicate a person resident abroad, whether of Ecuadorian nationality or any other, in an offence punishable with a sentence, the judge dealing with the case must transmit the documents to the President of the Supreme Court of Justice so that he can decide whether extradition should be requested from the Government of the country where the accused is living.

On the other hand, an Ecuadorian citizen who in a foreign country commits an offence for which Ecuadorian law specifies a penalty of maximum-term imprisonment (reclusión mayor extraordinaria) will be punished in accordance with the criminal law of Ecuador if he is found in Ecuadorian territory.

Thus, if the crime of torture is committed on foreign territory and the alleged offender is of Ecuadorian nationality, the Ecuadorian legal system provides for two situations. Where the alleged offender, in accordance with the international treaties to which Ecuador is a party, enjoys immunity from local jurisdiction in that foreign territory, the judicial bodies of Ecuador are required to bring him to trial and punish him in conformity with article 3, paragraph 2, of the Code of Penal Procedure. Where the offender enjoys no such immunity, it is assumed that the State in which the act was perpetrated will punish the culprit. If the offence remains unpunished, the competent judicial bodies of Ecuador are required to institute proceedings and impose the appropriate penalties as stipulated in article 3, paragraph 7, of the Code of Penal Procedure and consistent with rule 6 (a) laid down in article 6 of the Penal Code.

It is important to stress this principle, inasmuch as it gives the State jurisdiction over offences committed in violation of international conventions which allow Ecuadorian law to prevail.

Article 6

The scenarios envisaged in this article include deportation, extradition and the initiating of criminal proceedings.

The deportation of aliens is governed by articles 19 et seq. of the Immigration Act. Deportation proceedings are initiated when, among other causes, an alien is convicted of an ordinary offence. If the Immigration Service police learn of any occurrence constituting grounds for deportation, they may provisionally arrest the offending alien so that the General Superintendent of Police of the province where the arrest is made can initiate the appropriate proceedings. The law requires these proceedings to be flexible and speedy; the Superintendent of Police must, within 24 hours of initiating criminal proceedings for deportation, summon to appear before him a representative of the Public Prosecutor's Office, the alien and his designated defending counsel. The documents and evidence relating to the case must be produced at that hearing and a decision must be handed down within the following 48 hours. In the event of a stay of proceedings, the decision must be referred to the Minister of the Interior for confirmation or rejection. Any alien named in an exclusion or deportation order will be transferred to the country from which he came before entering Ecuador, to the country where he embarked for Ecuador, to his country of origin, to the country where he was domiciled prior to his entry into Ecuador or to any country prepared to accept him, as the case may be.

The procedure for extradition is governed by articles 1 et seq. of the Regulations on Aliens. Extradition must be requested by the diplomatic representative of the requesting State and the request must be accompanied by an authentic copy of the conviction or order for preventive custody issued by the competent judge or court. In urgent cases, the Minister of the Interior may order the individual concerned to be taken into preventive custody upon application to that effect by any means of communication from a competent judge or court, or a diplomatic or consular official of the requesting State. If this procedure is followed, however, an indication must be given of the offence committed, supported by a conviction or custodial order.

The procedures laid down by the law are calculated to offer the best procedural guarantees to the individual concerned and to ensure that the process is fair and impartial. Indeed, should any of the formal or substantive requirements not be fulfilled by the requesting State or by the national authorities dealing with the extradition case, the requested person will be released. The guarantees laid down by the law include the requirement that within 60 days of the individual's being taken into preventive custody, the requesting State must submit a formal request for extradition accompanied by the necessary documents. If this period elapses without a complete extradition request being submitted, the release of the requested person will be ordered and no new application for preventive custody will be entertained.

In the event that the requested person is detained, the Minister of the Interior will transmit the extradition file to the President of the Supreme Court of Justice who, if he finds it in order, shall, within 24 hours of receiving it, set a date and time for the requested person to appear and defend himself, designating a defending counsel for him if necessary. Once the evidence has been heard, the President of the Supreme Court of Justice has three days to grant or reject the request for extradition.

In the event of criminal proceedings, the Constitution provides that no one may be deprived of his freedom except by written order of a competent authority.

In this case, in conformity with article 172 of the Code of Penal Procedure, the competent judge may, for the purpose of investigating an offence, order a person detained before criminal proceedings are instituted, on the strength of his personal knowledge or of oral or written reports from the National or Judicial Police or any other person indicating that an offence has been committed and that particular individuals are likely to be responsible. Such detention, according to article 173, may not exceed 48 hours: if by the end of that period it is found that the detainee was not involved in the offence under investigation, he will be immediately set free. Otherwise, criminal proceedings will be instituted and, if they go ahead, an order of preventive custody will be issued.

It should be stressed here that, with the aim of reconciling criminal legislation with the Constitution, the Court of Constitutional Guarantees has ruled that no person may remain deprived of his freedom without trial for over 24 hours. This ruling is in keeping with article 19, paragraph 17 (h), of the Constitution.

The rights of prisoners are set out in the Constitution and in the Code of Penal Procedure. The Constitution provides that no one may be punished without due process or deprived of the right of defence, at any stage or degree of the proceedings. Every person on trial for a criminal offence shall have the right to counsel, and to have witnesses called in his defence.

Current legislation governing judicial procedure guarantees the simplicity, uniformity and efficiency of procedures, and the system of oral proceedings is adopted wherever possible. Moreover, unjustified delay in the administration of justice is punishable under the law, and, if repeated, constitutes grounds for the dismissal of the judge, who may be ordered to pay damages to the affected parties.

Implicit in the guaranteed right to a defence is that it should be possible for the accused to communicate with his relatives and his lawyer. There are no provisions which deny or restrict such communications, and the Supreme Court recognizes and respects them fully in practice. As a party to the Vienna Convention on Consular Relations, Ecuador observes the rule set out in article 36 of the Convention, which enables the accused to communicate with a consular representative of his country.

Where an accused person believes that he has been deprived of his freedom unjustly, he may avail himself of the remedy of habeas corpus or amparo, in accordance with article 17 (j) of the Constitution and article 458 of the Code of Penal Procedure.

In addition, an application for judicial review of the facts may be proposed in the case of an enforceable sentence. If the court allows the application, the convicted person has the right to compensation in the form and amounts indicated in the initial part of this report.

Article 7

As mentioned above, sections 5 and 6 of article 5, paragraph 4, of the Penal Code lay down that Ecuadorian law will be applicable in cases of offences against international law and any other offence for which special provisions of the law or international conventions stipulate that Ecuadorian law shall prevail. In such cases, foreigners who have committed such offences will be tried and punished in accordance with Ecuadorian laws, whether they are apprehended in Ecuador or extradited.

The procedural rights of accused persons are those set forth in the Constitution and criminal legislation of Ecuador, without any distinction between Ecuadorians and foreigners. As has already been pointed out, these instruments specify extensive arrangements to protect the accused person's right to a defence, his right to communicate with his defence counsel - who may be present at all stages of the proceedings - his relatives, and representatives of the State of which he is a national, as well as other guarantees that the trial will be fair and impartial.

Obviously, the punishment to be applied will be that which corresponds to the characterization of the offence in the Penal Code, taking into account aggravating or extenuating circumstances as appropriate.

Article 8

Ecuador does not restrict extradition to cases where a treaty is in force: article 3 of the Aliens Act provides that the Government of Ecuador may permit the extradition of foreigners awaiting trial or sentencing for ordinary offences committed in another State, upon application accompanied by supporting arguments from [that other] Government invoking the relevant treaty between the two parties or the principle of international reciprocity as required by Ecuadorian domestic legislation.

Article 8 of the Convention against Torture is peremptory in nature, and, as it has been incorporated into Ecuadorian legislation, it may be invoked and applied directly. The organs of public authority must take it into account at the appropriate levels and in the appropriate circumstances.

Article 9

Article 2 of the Regulations pertaining to the Aliens Act clearly indicates the readiness of the Government of Ecuador to cooperate in extradition proceedings and pre-trial detention of accused persons. It indicates that in urgent cases, the Minister of the Interior may order the pre-trial detention of an accused person following an appropriate request, inter alia, from a diplomatic or consular official of the requesting State.

Obviously, the application of this measure requires an indication of the offence with which the accused person is charged and a supporting conviction or custodial order.

The institution of letters requisitorial is governed by the Bustamante Code of Private International Law, a general set of rules which has been accepted by Ecuador. Under article 388 of the Code, "every judicial step which a contracting State has to take in another shall be effected by means of letters requisitorial or letters rogatory, transmitted through the diplomatic channel. Nevertheless, the contracting States may agree upon or accept as between themselves any other form of transmission in respect to civil or criminal matters".

Article 10

In the view of the Ecuadorian Government this article is of particular significance, since only by broadening the educational base to embrace all strata in society will it be possible to guarantee in each citizen self-respect and respect for his neighbour and social values in general. This has become a notable effort at the national level; an illiteracy rate of 32.5 per cent in 1970 was reduced to 19.3 per cent in 1980, and data for 1987 indicate a figure of around 9 per cent. In a few more years there will be only residual illiteracy in the country.

With this in view, and under the provisions of article 71, paragraph 3, of the Constitution, no less than 30 per cent of the central Government's current revenue will be earmarked under the national budget for education and the eradication of illiteracy.

Through a variety of programmes and projects aimed at children, young people and adults, progress has been made in broadening the country's educational base and enabling all citizens to exercise fully the rights set forth in the Constitution and the laws of the Republic.

Human rights education begins in the earliest classes at school, where the basic principles are taught, and continues throughout the years of schooling, following the provisions of the civics curriculum.

Ecuador's concern to spread human rights education extends to its indigenous peoples, and to that end translations have been made into Quechua of the principal international agreements, covenants and enactments on human rights, in addition to the Constitution itself and the laws which protect the rights set forth in the Constitution. The Ecuadorian Society for Human Rights, the Human Rights Institute of the Central University of Ecuador and the Friedrich Naumann Foundation have participated in this activity.

The Government has carried out and is continuing training and education programmes in human rights aimed at law enforcement officials.

Among recent events in this area, a human rights training seminar was organized in March 1990 for 150 members of the National Police. It covered general human rights issues, the impact of international treaties on this subject and the role of the police in the protection of human rights. It should be mentioned that efforts to educate the police in this area are to continue, under an agreement between the Latin American Association for Human Rights (ALDHU) and the Ministry of the Interior.

Similarly, there is a cooperation agreement between the Red Cross and the Ministry of Defence whereby human rights instruments to which Ecuador is a party will be distributed among army personnel, and lectures and seminars will be organized on international humanitarian law.

In addition, the Diplomatic Academy of Ecuador, in cooperation with the Committee of the Red Cross, has organized seminars on these topics in which members of the armed forces and the National Police have participated.

Human rights concerns have made themselves felt within the administrative structure of the Ministry of Foreign Affairs itself, which has set up a Directorate-General for Human Rights and Refugees to coordinate all activities in this area. Its programme for 1991 provides for a series of courses and seminars on human rights aimed at various groups of personnel in the public or private sector. They include, in October, a training encounter on "Pedagogy and human rights education", intended for teachers in the country's primary and secondary schools. In July this year a seminar-workshop was organized for examining magistrates and judges on the application of international instruments in judicial practice in Ecuador.

Ecuador devotes particular attention to this aspect, and has declared its full readiness to continue to cooperate in the promotion of human rights with the competent bodies in the United Nations system, and to receive appropriate assistance for that purpose.

Mention should also be made of the important work in this field being carried out by ALDHU, in close contact with the Government of Ecuador.

Article 11

It has already been mentioned that the Government has ordered the abolition of the Criminal Investigation Service, on the discovery of irregularities in its activities, and its replacement by the Judicial Police.

This new system of investigation, once in operation, will fall under the supervision of the Attorney General and the competent courts.

The Judicial Police will be provided with all modern facilities for investigation, in order to avoid any improprieties at the investigation stage.

With a view to the even greater protection of the rights of prisoners and the better and more flexible administration of justice, Executive Decree No. 2692 of 30 August 1991 established, within the Ministry of the Interior, the Office of the Under-Secretary for Justice, which will guide and supervise the examining courts, imposing disciplinary measures on those in which the officers or the staff are found to have committed improprieties in investigating an offence; the Office will also receive and process reports made to the Ministry on violations of human rights and constitutional guarantees in force in the country, inform the Office of the Attorney General and/or the appropriate examining judge when it learns of an offence which needs to be investigated, coordinate with the judiciary the establishment and operation of the Judicial Police, and build upon and accelerate the progress made in social rehabilitation in the various sectors, such as improvements in infrastructure, using programmes of work and instruction as means of rehabilitating offenders, and so on.

Article 12

Articles 15 et seq. of the Code of Penal Procedure contain rules governing the conduct of criminal proceedings, which are generally pursued at the initiative of the authorities.

Thus public criminal proceedings are begun through an initiating order which may be based on an investigation, a petition by a public prosecutor a complaint an accusation by an individual, a police report or inquiries or instructions from a higher administrative authority.

In keeping with these provisions, articles 292 and 293 of the Penal Code prescribe penalties for all officials or police officers who fail to report an offence, as well as doctors, surgeons, dentists, obstetricians or any other persons who, in the course of their duties, when providing professional services, discover a fact which displays the characteristics of an offence but do not report it, unless the person being attended to may thereby incur penal responsibility.

The Constitution provides that the Ecuadorian procedural system shall strive for simplicity, uniformity and efficiency in procedures. Unjustified delay in the administration of justice is punishable under the law, and, if repeated, constitutes grounds for the dismissal of the judge in question, who is also liable for damages.

Paragraphs 4 and 5 of article 277 provide for prison terms of between one and five years for public officials vested with judicial, government or administrative authority who deny, refuse or delay the administration of justice or harm the public interest or any person by making improper use of their powers.

In keeping with this provision, articles 460, 461 and 463 of the Code of Penal Procedure contain penalties for unjustified delays in the handling of cases. Article 463, for example, provides that wherever the time limits laid down in the law are not complied with, the offending official shall be fined by his superior an amount of up to half the average minimum living wage.

In addition, the Code of Civil Procedure contains precise provisions relating to penalties applicable to judges who unjustifiably delay the handling of cases (arts. 1095 et seq. of the Code of Civil Procedure and art. 459 of the Code of Penal Procedure).

Article 13

Mention has already been made of the channels, recourses and machinery available to a person who claims to have been the victim of torture in lodging a complaint in the various judicial and administrative bodies and levels, by means of an accusation lodged with a court, or a complaint submitted to the Court of Constitutional Guarantees or the special commissions of the Congress.

Statements by witnesses are made before the judge, the clerk of the court and the curator where appropriate. Neither the judge nor the parties to the proceedings may put leading, impertinent or trick questions. Once the statement has been read to the witness, it is signed by the judge, the clerk and the witness himself.

Articles 203 and 204 of the Penal Code stipulate penalties for judges, officials and law enforcement officers who, by means of torture, compel persons to testify against themselves, their spouses, ascendants, descendants or close relatives.

Article 14

Ecuadorian legislation contains no express mention of compensation for the victims of torture, but since torture is a publicly actionable offence extensively characterized in criminal law, the victims may invoke the right set forth in article 20 of the Constitution, relating to the State's obligation to compensate individuals for any damage they may suffer as a result of the operation of public services or acts performed by public officials in the exercise of their functions. Damages are to be paid jointly and severally by all those cited in an individual accusation who are found guilty of the offence. The sentence must order payment of such damages (art. 329 of the Code of Penal Procedure).

Article 15

Among the guarantees laid down in the Constitution, it is stipulated that no one shall be obliged to testify in criminal proceedings against himself in any matter in which he may incur penal responsibility.

In keeping with this provision, articles 203 and 204 forbid judges and other officials to extract statements through the use of torture.

Article 127 of the Code of Penal Procedure provides that the testimony of accused persons must be given freely and voluntarily, while under article 128 it is forbidden to compel an accused person, through physical or moral coercion, to declare himself guilty of an offence.

He will also have the right to remain silent. Where he does so, the judge will order the clerk of the court to place that fact on record and will close the hearing (art. 134 of the Code of Penal Procedure).

Once the accused's statement has been made, he will sign the record only "if he wishes to sign, knows how to sign and is able to sign" (art. 135 of the Code of Penal Procedure).

Consequently, any statement made in violation of these principles is void and without probative force.

Article 16

The Ecuadorian legal order in criminal matters makes any act of violence committed by a public official or any other person a criminal offence. Such cases are subject to the appropriate rules in the Penal Code. The Code also lays down penalties for the various offences which can be committed solely by public officials by virtue of their duties.

Article 213 of the Penal Code provides that any other arbitrary act violating the freedoms and rights guaranteed by the Constitution that is ordered or carried out by an employee or public official, representative of authority or law enforcement officer shall be punishable by a prison term of between three and six months.

This provision applies to all offences against constitutional rights and racial equality, and thus covers all the areas in which a violation or abuse of authority might occur.